

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Joint Application by BellSouth)	
Corporation, BellSouth)	
Telecommunications, Inc. and BellSouth)	CC Docket No. 02-35
Long Distance, Inc., for Provision of)	
In-Region, InterLATA Services in)	
Georgia and Louisiana)	

COMMENTS OF NETWORK TELEPHONE CORPORATION

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TABLE OF CONTENTS

SUMMARY.....	I
I. BELLSOUTH'S PERFORMANCE DATA ARE INACCURATE AND UNRELIABLE.....	1
II. BELLSOUTH DISCRIMINATES AGAINST NETWORK TELEPHONE.....	4
<i>A. Flow Through.....</i>	<i>4</i>
<i>B. Total System Fallout.....</i>	<i>5</i>
<i>C. LSRs.....</i>	<i>5</i>
<i>D. Invalid Clarifications.....</i>	<i>5</i>
<i>E. Error-Ridden UNE-P Conversions.....</i>	<i>5</i>
III. BELLSOUTH IS INCAPABLE OF ADEQUATELY PROVISIONING ESSENTIAL SERVICES TO ALL CLECS.....	6
IV. NETWORK TELEPHONE IS HARMED BY BELLSOUTH'S POOR PROVISIONING	9
V. CONCLUSION	12

SUMMARY

Far from demonstrating that BellSouth has complied with applicable standards for Section 271 approval, BellSouth's application presents unreliable data; demonstrates a persistent pattern of discrimination against Network Telephone; and shows that BellSouth is incapable of providing adequate levels of service to *all* CLECs. As explained in these comments, BellSouth's conduct in these regards continued right up to the present of filing its application and afterwards.

BellSouth's performance data are inaccurate and unreliable. Inaccurate performance data make it impossible for the Commission to evaluate whether BellSouth has adequately demonstrated that it meets the standards set forth in Section 271 of the Act. As detailed in these comments, Network Telephone has identified inaccurate data in regard to information concerning Network Telephone in the Performance Metrics ("PMAP") Database that calls into question the overall accuracy of that database. The Commission should reject BellSouth's application because it cannot make a rational decision based on BellSouth's PMAP reporting.

In any event, even assuming that the PMAP data are correct, BellSouth discriminates against Network Telephone in nearly every category of OSS provisioning. Thus, Network Telephone's flow through percentage trailed the aggregated data by as much as 32%. BellSouth was also more often the cause of a Total System Fallout for Network Telephone customers than for those of other CLECs. BellSouth LSR errors for Network Telephone Customers were approximately 22% to 31% greater as compared to the aggregated data. Network Telephone also experienced excessive incorrect invalid clarification requests issued by BellSouth. Over 30% of the invalid clarifications issued by BellSouth in January 2002 were issued to Network Telephone alone. In addition, during a conversion of Network Telephone customers from resale to UNE-P,

BellSouth caused over 800 Network Telephone customers to lose service. The average outage exceeded 24 hours resulting in Network Telephone losing these customers back to BellSouth.

In view of BellSouth's performance with respect to Network Telephone, BellSouth is clearly incapable of adequately provisioning essential service to *all* CLECs. While BellSouth claims to have hired consultants to provide technical advice free of charge to CLECs that request BellSouth assistance, this is no more than an admission that it currently lacks resources to provide adequate OSS to all CLECs. Furthermore, Network Telephone has never been the beneficiary of such assistance. For example, a costly and time-consuming attempt at converting to BellSouth's Telecommunications Access Gateway OSS was abandoned primarily because of BellSouth's breach of its commitments to support implementing this system. Until BellSouth is capable of providing all CLECs with a competent level of support, the Commission must reject its application.

BellSouth's discriminatory treatment of Network Telephone has not ended since the filing of its *Supplemental Brief* in support of its 271 application. Recently, Network Telephone was informed without explanation that BellSouth would no longer process mechanized T1-UNE orders. Instead, Network Telephone must submit orders manually. Further, BellSouth is rejecting CLEC transfer requests of BellSouth customers that subscribe to BellSouth's internet service provider retail affiliate, FastAccess. BellSouth is refusing to transfer customers to Network Telephone even where Network telephone has signed Letters of Authorization from customers that wish to switch their service to Network Telephone.

In short, BellSouth is still engaging in classic monopolist behavior in the local markets, and has not opened its market to competition. It should not be granted authority under Section 271 of the Act at this time.

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COMMENTS OF NETWORK TELEPHONE CORPORATION

Network Telephone Corporation (“Network Telephone”) submits these comments concerning the above-captioned application of BellSouth Corporation (“BellSouth”) for authority to provide in-region, interLATA services in Georgia and Louisiana. Network Telephone is a Competitive Local Exchange Carrier (“CLEC”) based in Pensacola, Florida that provides facilities-based services in eight states in the BellSouth region. Network Telephone provides small and medium-sized businesses a full complement of telecommunications services, including local and long-distance telephone and high speed data services. For the reasons stated herein, the Commission should deny the application.

I. BELLSOUTH’S PERFORMANCE DATA ARE INACCURATE AND UNRELIABLE

Prior to granting BellSouth’s application to provide in-region, interLATA services, the Commission must have confidence in the performance data submitted by BellSouth in support of the application.¹ To the extent that BellSouth’s performance data is inaccurate or unreliable, the

¹ See, e.g., Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York*, 15 FCC Continued

Commission will be unable to evaluate whether BellSouth has adequately demonstrated that it meets standards set forth in Section 271 of the Act that could show that it has opened to competition the local telecommunications markets in Georgia and Louisiana. Network Telephone has carefully evaluated BellSouth's data reported in its Performance Metrics ("PMAP") database and discovered significant errors concerning data pertaining to Network Telephone that demonstrates that BellSouth's PMAP data are unreliable as submitted.

Exhibit 1 and Exhibit 2 to these comments contain information found in BellSouth's PMAP database for December 2001. Exhibit 1 contains data initially posted by BellSouth on its PMAP website for December 2001. Exhibit 2 includes information that BellSouth re-posted reportedly in order to correct inaccuracies contained in the data originally reported for December 2001. BellSouth's re-posted data for December 2001 shows Network Telephone as having made 73 orders through its Telecommunications Access Gateway, or "TAG." TAG is one of three electronic interfaces BellSouth ostensibly offers competitive carriers. Although Network Telephone incurred substantial costs and expended significant efforts in attempting to implement TAG, as explained below, Network Telephone does not use the TAG OSS interface to place any orders.

The inclusion of these TAG orders for Network Telephone, were in fact, erroneous since Network Telephone does not have TAG at all, resulting in BellSouth, in effect, overstating the availability and accuracy of TAG. Moreover, this erroneous data calls into question the reliability of all other TAG information reported by BellSouth in the application. Network Telephone only has knowledge about the specific information pertaining to it. In view of the

Rcd 3953, at ¶¶54-57 (1999); Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Texas*, Continued

errors pertaining to Network Telephone, it is likely that BellSouth has incorrectly posted information for other CLECs as well.

However, this is not the only reason showing the BellSouth's PMAP TAG data are unreliable. When the December 2001 initial and re-posted data concerning Network Telephone are further analyzed, more troubling data inconsistencies are discovered. As stated, BellSouth re-posted the December 2001 data in order to correct errors contained in its original December 2001 report.² In the re-posted data, all of the data reported concerning Network Telephone changed.³ However, none of the aggregated information for all CLECs changed.⁴ The only way for Network Telephone's data to change without impacting the aggregated numbers for all CLECs is if there were exactly the same offsets found elsewhere in regard to other carriers. This is virtually impossible. In addition, as noted above, the re-posting process erroneously reported that Network Telephone placed 73 orders through TAG. This factor alone should have changed the aggregated data for all CLECs. Instead, the obvious explanation is that BellSouth's aggregated data is simply incorrect.

The foregoing inconsistencies demonstrate that there are widespread flaws in BellSouth's PMAP database, raising serious data integrity issues with the BellSouth PMAP database in general. Accordingly, the Commission should reject the application because it cannot make a rational decision based on BellSouth's PMAP reporting.

15 FCC Rcd 18354, at ¶57 (2000) [hereinafter "*Texas Order*"]

² Exhibit 1 contains the information originally posted in the PMAP database relating to December 2001 and Exhibit 2 is the re-posting of the December 2001 data.

³ Compare the row titled "Total NTC" of exhibits 1 and 2.

⁴ Compare the line titled "Total BST" of exhibits 1 and 2.

II. BELLSOUTH DISCRIMINATES AGAINST NETWORK TELEPHONE

Even assuming that the data in BellSouth's PMAP database is correct, which is not the case as discussed above, the reported information demonstrates that BellSouth discriminates against Network Telephone in nearly every category of OSS provisioning regardless of what the data might show generally.

A. Flow Through

Network Telephone receives disparate flow through treatment and has had no ability to remedy the situation. According to BellSouth's PMAP database, Network Telephone has experienced eleven months of discriminatory treatment by BellSouth. During the second quarter of 2001, Network Telephone's percent flow through ranged from greater than 25% to more than 32% lower than the flow through percentage reported by BellSouth for the aggregated data. The data for the third quarter of 2001 demonstrates that BellSouth's flow through percentage for Network Telephone trailed the aggregated data by a range of 14% to over 25%, while the fourth quarter illustrates a difference of 12% to more than 14%.

BellSouth's excessively high invalid clarification request percentage harms Network Telephone in at least two ways. First, customer order completion is slowed to the point where customers may re-consider their choice blaming Network Telephone for the delay in conversion. Second, Network Telephone incurs substantial back office costs in fixing the clarification problems with BellSouth. Network Telephone personnel waste significant hours on the phone waiting for BellSouth personnel to answer and connect them to competent people to solve the BellSouth-created problem.

B. Total System Fallout

Network Telephone also received disparate treatment when the Total System Fallout numbers are analyzed as well. From the beginning of the second quarter of 2001 through the end of the fourth quarter 2001, BellSouth was anywhere from approximately 6% to 20% more likely to be the cause of a Total System Fallout for Network Telephone Customers than for a hypothetical CLEC receiving service measured in accordance with the aggregated data. Moreover, Total System Fallout for CLECs as a whole is unacceptable.

C. LSRs

Further discriminatory treatment is indicated by the PMAP data that tracks LSRs. The percent of BellSouth LSR errors that affected Network Telephone's orders for October 2001 was 30.79%. For November 2001 it was 21.97% and for December 2001 it was 24.65%.

D. Invalid Clarifications

BellSouth issues Network Telephone unusually large numbers of invalid clarifications. In the month of January 2002, the percent of invalid clarifications issued by BellSouth to Network Telephone was over 30% of total clarifications. Network Telephone has been unable to rectify the situation to date in spite of repeated requests for BellSouth to review its procedures. BellSouth continues to count these invalid clarifications as CLEC errors and does not track them.

E. Error-Ridden UNE-P Conversions

BellSouth has also caused many Network Telephone customers to switchback to BellSouth by providing incompetent service to Network Telephone. Between February and May 2001, Network Telephone requested that BellSouth convert over 27,000 customers from resale to UNE-P. Through the use of a separate "N" and "D" order methodology, BellSouth

caused three percent of the Network Telephone business customers to lose their telephone service during this conversion, causing customer dissatisfaction with Network Telephone. The average outage exceeded twenty-four hours and, subsequently, scores of these customers were lost to Network Telephone.

III. BELLSOUTH IS INCAPABLE OF ADEQUATELY PROVISIONING ESSENTIAL SERVICES TO ALL CLECS

In order to obtain 271 authority, BellSouth must demonstrate that functions BellSouth provides to itself in connection with its own retail service offerings are accessible to competing carriers in “substantially the same time and manner” as it provides to itself.⁵ Where a retail analogue exists, BellSouth must provide access that is equal to the level of access that BellSouth provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.⁶ For those functions that have no retail analogue, BellSouth must demonstrate that the access it provides to competing carriers would offer an efficient carrier a “meaningful opportunity to compete.”⁷ Moreover, a BOC must devote adequate resources to allow all competitive carriers the same level of access.⁸

In an attempt to demonstrate compliance with these requirements, BellSouth claims to have hired consultants to provide technical advice free of charge to CLECs that request assistance from BellSouth.⁹ In an effort to support its claim, BellSouth has peppered its *Supplemental Brief* with references and affidavits of CLECs proclaiming BellSouth's virtues.

⁵ See 47 U.S.C. § 271(c)(1)(B)(i), (ii); see, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20618-19 (1997).

⁶ See *id.*

⁷ *Id.*

⁸ See *Texas Order*, supra note 1, at ¶96.

BellSouth suggests that it has established a “virtuous cycle” that ensures the continued improvement and nondiscriminatory performance of its OSS.¹⁰

As discussed above, however, Network Telephone's experience with BellSouth has been diametrically opposed to the description set out in BellSouth's *Supplemental Brief*. In every category, BellSouth provides inadequate provisioning. The obvious explanation is that BellSouth either intentionally discriminates against Network Telephone, or, that it has not devoted adequate resources so that it can adequately provide *all* CLECs necessary services. In either event, BellSouth has not met the legal standard for Section 271 approval and the application must be denied.

Moreover, BellSouth's claims of having hired consultants is illusory at best. For example, at the recommendation of BellSouth, Network Telephone chose initially to implement the TAG OSS interface. Network Telephone decided to attempt to implement TAG solely on the advice and guidance from BellSouth personnel who committed to meeting specific times for placing this system in service and who further committed to attaining certain levels of performance. These commitments were not met. After spending over three-quarters of a million dollars and three months of time in attempting to implement the TAG OSS interface, Network Telephone was forced to scrap the entire effort primarily due to the unavailability of BellSouth “experts.” Despite constant requests that BellSouth meet its commitments, BellSouth never provided any expert consultants to permit the implementation of the TAG interface by Network Telephone. Contrary to BellSouth's assertion that it has “hired expert consultants to provide

⁹ See *Supplemental Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, at 9 (filed Feb. 14, 2002) [hereinafter *Supplemental Brief*].

¹⁰ *Id.* at 7.

technical advice, free of charge, to CLECs that request assistance with integrating from BellSouth's unparsed pre-ordering data stream,"¹¹ Network Telephone has found BellSouth personnel to be completely unhelpful and, in many instances, affirmatively resistant to meeting commitments to implement the TAG interface and, indeed, in all areas of operation related to electronic interfaces. BellSouth further claims that it has hired Science Application International Corporation and Accenture to provide technical assistance related to software and the CLEC's systems at no charge.¹² Network Telephone has never been the beneficiary of any consultants hired by BellSouth, nor have BellSouth personnel provided competent assistance to the Company in its attempts to effectively access BellSouth's OSS. In fact, when NTC needed assistance in obtaining historical ADUF records, Accenture did provide them, but at a cost of over \$22,000 to Network Telephone for one month's records. After Network Telephone complained to the Florida Public Service Commission, BellSouth acknowledged the billing was excessive and provided a credit of \$7,791 to Network Telephone. Network Telephone continues to dispute charges for 37 hours of "planning and analysis" billed by Accenture for obtaining the ADUF records.

Obviously, BellSouth's failure to participate effectively in implementing the TAG OSS interface has adversely affected Network Telephone's ability to mechanize its pre-ordering process and severely limited Network Telephone's ability to ascertain order status during the pre-ordering stage of the ordering process. As a result, Network Telephone employees spend an inordinate amount of time calling BellSouth and waiting on hold to determine pre-ordering

¹¹ *Id.* at 9.

¹² *See id.* at 10.

completion status. BellSouth benefits from its own incompetence as it has effectively added unnecessary costs to Network Telephone's provision of service.

In short, the fact that a few CLECs are able to obtain assistance and superior customer service does not prove that BellSouth has met the standards set out in Section 271. Rather, Network Telephone's experience shows that BellSouth has failed to devote adequate resources to opening its markets to competition. Until BellSouth is capable of providing all CLECs with the level of support that it details in its *Supplemental Brief*, the Commission must reject its application.

IV. NETWORK TELEPHONE IS HARMED BY BELL SOUTH'S POOR PROVISIONING

While Network Telephone has demonstrated the pervasive discriminatory and poor performance by BellSouth, the Commission should remember that BellSouth's anti-competitive behavior puts Network Telephone at a tremendous disadvantage both with respect to BellSouth's retail affiliates and to other CLECs. When BellSouth wholly under performs in its provision of flow through to Network Telephone, or Total System Fallout, LSR errors and invalid clarifications, Network Telephone incurs additional costs and loses potential customers.

Two recent events serve to highlight problems Network Telephone continues to have with BellSouth's OSS and back office interfaces. Network Telephone was very recently informed without explanation that BellSouth would no longer process mechanized T1-UNE orders. Instead, Network Telephone must submit orders manually. Manual processing requires Network Telephone to incur substantial additional costs. The Commission must not grant BellSouth's application for interLATA, in-region telecommunications services until BellSouth can adequately provision service to all CLECs.

Additionally, BellSouth has recently thwarted transfers of potential Network Telephone customers that receive high speed internet access from BellSouth's retail affiliate. BellSouth has instituted a practice where it denies Network Telephone's and other CLECs request to transfer a customer, after Network Telephone presents BellSouth with a signed Letter of Authorization ("LOA") from the customer, where the CSR indicates that the customer is receiving FastAccess xDSL service from BellSouth's retail affiliate. It is significant that BellSouth initially claimed that this was a generic third party internet service provide problem when in fact this policy was designed to protect its own internet service provider affiliate.¹³ When a customer subscribes to FastAccess xDSL service from BellSouth's retail affiliate, BellSouth indicates the receipt of this in the CSR by the use of an ADSL Universal Service Order Code ("USOC"). When BellSouth receives the LOA and accesses the CSR, BellSouth claims that since their retail internet service provider affiliate is also a customer of the BellSouth service, there is a "third party" involved so the LOA is not enough in itself to effectuate the transfer. BellSouth states that it will not transfer the customer until it receives a disconnection request. Network Telephone currently has 21 signed customer LOAs throughout the BellSouth region from customers that would like Network Telephone to be their service provider. However, BellSouth will not transfer these customers until they disconnect service with BellSouth FastAccess. This blatant attempt to deny customers choice by refusing to work CLEC transfer orders for those customers who receive FastAccess xDSL service from

¹³ BellSouth admitted to Network Telephone in the Florida Public Service Commission sponsored CLEC Experience Workshop in the KPMG Third Party Test docket that the ADSL USOC is used to denote BellSouth's broadband service offering and not just for other internet service providers who happen to buy DSL service from BellSouth. In effect, BellSouth uses its wholesale function to protect its own retail ISP unit from competition by thwarting customer transfers to CLECs. This is classic anti-competitive behavior by a monopolist.

BellSouth's internet service provider retail affiliate reveals BellSouth's true colors: that of a unmitigated monopolist.

V. CONCLUSION

For the foregoing reasons, the Commission must reject BellSouth's application for 271 authority in Georgia and Louisiana.

Respectfully submitted,

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